

this eternal verity. It abounds with statements like the following: "Among Christian nations alone the possibility that what has failed to occur in two thousand years will somehow occur in the next two or three decades seems negligible." By the same token the chance that atomic energy should be released in 1944 seemed negligible in 1943. Science, too, has had a period in which inertia with respect to innovations was very great, in which truly creative acts appeared impossible; but it succeeded in taking the important step from the bondage of tradition to productive freedom. Mr. Borden's claim that "struggle is as basic an aspect of human life as cooperation" seems as archaic as Aristotle's belief that a stone falls, and fire rises, because each tends toward its natural place.

Mr. Borden's belief in the failure of nations to come to terms may be correct; my criticism of his premise may be invalidated by an atomic catastrophe. In that event, however, I doubt whether he will long enjoy his knowledge of having been right.

HENRY MARGENAU†

THE PROTECTION OF THE PUBLIC INTERESTS IN PUBLIC CONTRACTS. By Herman G. James. Chicago: Public Administration Service, 1946. Pp. 90. Mimeographed.

THOSE who are led by the ambitious title of this booklet to expect a discussion of various methods by which the public may better obtain its money's worth in its business dealings are doomed to disappointment. Except for two pages devoted to dismissing the whole subject of direct performance versus performance by contract with the statement that there is much to be said on both sides, it deals only with the problem of how to draft statutes which will reduce opportunities for graft and collusion in the purchase and sale transactions of public bodies.

Starting with the tacit assumption that the general character of our public servants is such that maximum protection against their dishonesty is of paramount importance, the author next assumes that the most rigid possible purchasing procedure in the traditional sealed competitive bidding pattern is the best way to accomplish this result. He therefore sees no need to do more than to examine and catalogue the various statutory controls now in scattered use throughout the country, and to submit, in conclusion, a "model" statute which combines all of these controls—plus a few additions and refinements of his own devising—under one heading.

Admittedly graft and favoritism in the purchase of supplies has long troubled all business organizations, both public and private. Purchasing

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† Professor of Physics, Yale University; author of *FOUNDATIONS OF PHYSICS* (1936) and *MATHEMATICS OF PHYSICS AND CHEMISTRY* (1943).

agents are inevitably subjected to temptations by over-zealous salesmen. And since the general public is too little informed, too apathetic, or too disorganized to do the self-initiated checking which profit interested ownership provides in all but the largest of corporations, it may perhaps be conceded that public purchasing systems require more formal safeguards against graft and collusion than private organizations have felt to be necessary. The real question, therefore, is not whether controls are desirable, but what types of controls are most effective and at what point does the law of diminishing returns make further restriction in the interests of graft prevention more costly than it is worth.

Unfortunately the author precludes any real examination of these basic issues by his lawyerlike failure to question the validity of his major premises. Even the fact that during the past six years the bulk of federal purchases for the war effort were made by negotiation rather than by the competitive bidding method failed to create in Mr. James any scepticism whatever as to the value of traditional public purchasing methods. Nor can his complete disregard of this recent experience with negotiated contracts be justified on the basis that these were emergency purchases in "unusual" times. Every peace-time sellers' market confronts purchasing bodies with sufficiently similar conditions and problems to warrant at least some investigation of the results of this procedure.

The real function of any purchasing system is to obtain for the purchaser—be it private industry or public body—the best value for the money expended. Too much concern with hampering dishonest officials has blinded the author—as it has many legislators—to the fact that a complicated competitive bidding system does not necessarily insure this net result. Frequently, in fact, it may have the opposite effect. The mass of red tape entangling some public purchasing systems is so formidable that it often either completely discourages potential low bidders or causes them to add enough to their bids to cover the additional cost and nuisance involved in handling a public contract. Public bodies, in other words, are not "favored" customers in many areas. The result is that the very foundation of the whole theory of secret competitive bids—that there is real competition for public business—crumbles. The "this is more trouble than it's worth" reaction is not conducive to low bids. Yet, except in a very strong buyers' market, too many businessmen tend to take that attitude when confronted with such requirements as affidavits, deposits of 5% of the bid amount, bids in quadruplicate, complicated specifications, et cetera. Another discouraging factor is the possibility that even after a contract has been won it may be invalidated because some technicality in bidding has been overlooked somewhere along the line. This loss of real competition for public business is a possible serious hidden cost of cumbersome competitive bidding systems. It should be carefully weighed against the savings such systems may effect in reducing graft.

But there is even room for doubt as to the validity of the assumption that competitive bidding is an important graft deterrent. The author himself

underscores this doubt by his somewhat grudging admissions that loop-holes are inevitable in even the most carefully constructed procedures and hence the only real protection against dishonesty in purchasing departments is the integrity of officials; that far more opportunities for graft exist at the inspection than at the contract letting level; and that such existing devices for policing regulations as suits by taxpayers and losing competitors require more interested, informed and aggressive individuals than exist. Yet there is not even a suggestion that there might be value in a study of how effectively the existing comprehensive competitive bidding statutes have eliminated the evils at which they are aimed.

The foregoing are only a few of the questions which can and should be raised. Sound recommendations for effective public purchasing policy and procedure can be made only after all such aspects of the problem have been carefully considered and checked by field work. The author, therefore, by beginning with what might well never be reached as a conclusion, has mis-spent much valuable time. Appendix II, for example, contains a digest of the statutes of each of the forty-eight states dealing with the letting of public contracts. In view of the difficulty involved in collecting all such statutes in even one state—scattered as they are under a variety of headings—this appendix alone represents a painstaking piece of research. It is indeed regrettable that the product of so much labor leaves the real questions not only unanswered but unasked.

ADDISON A. MUELLER†

GRUNDRISS DES OESTERREICHISCHEN BUERGERLICHEN RECHTS. By Karl Wolff (3d Ed.) Vienna: 1946. Pp. 328.

THE remarkable feature of this book, which outlines the Austrian civil law, is that it contains no apparent trace of the effects of the Nazi occupation. Yet this is its second edition since the liberation of Austria. It could as well have been written in 1938 as in 1946. Perhaps the author would like to forget and have others forget the ordeal of seven years of foreign occupation. The impact of Nazi rule on Austrian law has been considerable, however, and should hardly go unnoticed. It is impossible to teach or practice law in a liberated country without taking into account the deep impression made by the conquerors upon the former legal system.

Professor Wolff's silence in this textbook is certainly free from suspicious motives and cannot be imputed to shame or any desire to conceal his own wartime record. He is one of three prominent men remaining in Austrian civil law who are above any suspicion of even mental collaboration. Judge Klang's amazing brain idled away in the concentration camp of Theresien-

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† Assistant Professor of Law, Yale Law School.